

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN CONFERENCE FOURTH
EPISCOPAL DISTRICT AFRICAN
METHODIST EPISCOPAL CHURCH and
GRACE CHAPEL AFRICAN METHODIST
EPISCOPAL CHURCH,

UNPUBLISHED
August 21, 2007

Plaintiffs-Appellants,

v

No. 269225
Wayne Circuit Court
LC No. 04-425468-CZ

COMERICA BANK,

Defendant/Cross-Plaintiff-Appellee,

and

MICHELLE MORRIS,

Defendant/Cross-Defendant-
Appellee.

Before: White, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Plaintiffs, the Michigan Conference Fourth Episcopal District African Methodist Episcopal Church (AME Church) and Grace Chapel African Methodist Episcopal Church (Grace Chapel), brought this action to quiet title, alleging that defendant Michelle Morris, the former pastor of Grace Chapel, did not have actual or apparent authority to procure an \$85,000 mortgage from defendant Comerica Bank on church property in 2002. Following a jury trial, the trial court entered a judgment of no cause of action in favor of defendant. Plaintiffs appeal as of right. We affirm.

I Basic Facts And Procedure

In 2001, defendant Morris, then pastor of plaintiff Grace Chapel AME Church, took out a loan for \$63,000, secured by church property, with National City Bank. As part of the application process, Morris presented a statement, purportedly signed by members of Grace Chapel's Board of Trustees, approving the loan. In 2002, Morris applied for and received the subject \$85,000 loan from defendant Comerica. The proceeds were used to pay off the National City loan, which was in default; the surplus was paid to Grace Chapel; and a mortgage securing

the loan was recorded. After the second loan went into default, Morris was removed from her position as pastor. Plaintiffs brought this action, claiming that Morris did not have authority to mortgage church property.

Plaintiffs filed their complaint in August, 2004, claiming: (I) breach of fiduciary duty with respect to Morris; (II) negligence with respect to Comerica; (III) rescission of contract; (IV) lender's liability; and (V) injunctive relief. Plaintiffs requested a jury trial. In September, 2004, plaintiffs filed an amended complaint that incorporated the previous claims and alleged additional claims for: (I) quiet title and slander of title; (II) fraud; and (III) conspiracy to defraud.¹ Shortly thereafter, defendant Comerica was enjoined from foreclosing on the property, pending resolution of the case. A default was entered against defendant Michelle Morris in November, 2004.

Defendant Morris was pastor of Grace Chapel for approximately six years. At the time of trial, she had been "dismissed" and was no longer an ordained AME minister. According to the Grace Chapel board's written authorization, the National City loan was intended for structural repairs. However, Morris' successor, Reverend Michael Andre Smith testified that when he arrived at Grace Chapel, the church was in a state of complete disrepair, and its insurance, telephone, and electric service had all been cancelled for nonpayment.

After the 2000 National City loan was repaid with the 2002 Comerica proceeds, Grace Chapel received a check for the balance. Smith testified that only about \$4,400 of the proceeds had actually been spent on the church. Not all of the money could be accounted for, but the church had issued checks to pay Morris, members of Morris's family, and for cash; and checks appeared to have been used for tuition at a school attended by Morris's grandchild, Morris's rent, and Morris's car insurance. In addition to the loan debt, the church incurred more than \$28,000 in attorney fees.

Norman Victor Osborne, the presiding elder of the South District of the AME Church, testified that Grace Chapel was in his district. However, Osborne had been a church pastor at the time the instant mortgage was executed and did not have oversight responsibility for Grace Chapel at that time.

Osborne explained that the "AME is an episcopally governed church, meaning that it's a church that has a hierarchy. There's a Bishop and then various districts, and we have some 20 districts spanning from the United States through South Africa. Each district is superintended by a Bishop." The church was "ruled by the Discipline and the 25 Articles of Religion," a document that sets out rules that govern some aspects of church activity. Osborne explained that there was a rule that "there must be a church conference in order to buy or sell property or to encumber property, and that basically is the responsibility of the local church. The Trustees administer and oversee the property, but it requires a church conference to sell or to purchase."

¹ The trial court dismissed plaintiffs' fraud claims at trial, before the case was submitted to the jury.

After a church conference is held for the local church members, they submit its notarized minutes to a Quarterly Conference for approval.²

According to the Discipline, all church property was to be held in trust for the African Methodist Episcopal Church, Inc. A deed was introduced showing that the AME Episcopal Conference quitclaimed the subject property in 1964 to Grace Chapel itself, and there was no in-trust language on the deed. However, current pastor Reverend Smith, testified that according to the Discipline, local church property was generally held in trust regardless of whether the documents of conveyance included in-trust language.³

The Discipline also contained a section regarding mortgages, which stated that “the Board of Trustees, incorporators of the local church collected and organized as prescribed in the Doctrine and Discipline of the African Methodist Episcopal Church, shall have the power to mortgage or encumber the property of the local church or corporation,” “provided such action has been authorized by a majority vote of the membership present in a duly called church conference for this purpose,” with 14 days notice to the congregation, and also “approved by a resolution in a regular session of the Quarterly Conference.”

Osborne testified that Morris should not have mortgaged Grace Chapel and did not have the authority to do so. However, Osborne acknowledged that Morris signed a statement for Comerica saying that she was authorized to enter into the loan for Grace Chapel. AME district presiding elder Reverend Harold C. Huggins was listed as sole director of Grace Chapel on a state nonprofit information sheet filed in March, 2001, with Morris listed as president and resident agent. Osborne acknowledged that the July, 2002, information update for the Michigan Department Consumer and Industry Services listed Morris as resident agent, president, and sole director of Grace Chapel.

Lillie Vicks, a member of Grace Chapel, had been a member of the board of trustees since 1990, including the years 2000 and 2002, and served as secretary. Vicks testified that Grace Chapel is a small church with about 60 members, mostly retirees. When Morris was appointed pastor of Grace Chapel, there was no mortgage. Vicks testified that, as a member of the church, she had no knowledge of the mortgages that Morris took out and never saw any bank papers. During the time that Morris was pastor, the church got central air conditioning and basement block windows, but no major renovations; Vicks was not aware of any improvements that would have cost \$85,000.

Vicks testified that Grace Chapel did not have an accountant at the time Morris entered into the subject mortgage. However, the Comerica loan file contained a financial statement of Grace Chapel’s debts and assets for 2001, purportedly prepared by an accountant, which

² According to former Grace Chapel board member Lillie Vicks, quarterly conferences were simply meetings at the local church, attended by local church members.

³ Under the terms of the Discipline, property was considered in-trust under certain circumstances, not specifically argued at trial.

indicated that Grace Chapel had a net profit of \$33,165 in 2001.⁴ Grace Chapel's purported 2001 financial statement listed the National City loan for \$62,000, as a long-term liability.

Vicks explained that all church members were given a copy of the church Discipline. Vicks testified that Morris did not "go by the Discipline," and that she did not handle finances the way previous pastors had done. Vicks agreed that the Discipline required the board of trustees to keep minutes, and adopt by-laws, but explained that they did not do so because "Rev. Morris did not go by the Discipline." The Discipline also required that the board have a treasurer, but there was no treasurer while Morris was pastor. Vicks testified that Grace Chapel did not comply with the Discipline the whole time that Morris was pastor.

Morris's sister and brother-in-law were a steward and a trustee, and her sister handled the finance book, which was also unusual. Vicks explained that she was "taken off the finance board" and the financial secretary book was taken from her when she asked Morris too many questions about finances, and Vicks never asked to see the book again. Vicks testified that Grace Chapel had by-laws, entered into under the former pastor, and that, although there were no finance meeting minutes, she continued to take minutes of official board meetings and the Quarterly Conferences, but no local by-laws or minutes were produced. However, Vicks explained, the church took in so little money that, after paying the pastor's salary and the utility bills, there was not enough to worry about so she did not report the irregularities to church authorities. She said that she did not know about the bank loans that Morris took out.

Reverend Huggins was the presiding elder of the South District of the AME Church at the time that Morris was a pastor, and Grace Chapel was one of the 33 churches in his charge. Huggins testified that no pastor has the authority to enter into a loan agreement, and that Morris did not ask for his permission. Huggins testified that a pastor could not serve as an officer of the board of trustees because a pastor is not a member of any local church; rather, she or he is a member of the AME church annual conference. Huggins received regular reports from the pastors of all the churches in his district and Morris never indicated that she had incurred any indebtedness.

Gary Mack, a vice president and commercial loan officer for defendant Comerica, testified that he did not know the procedures for taking out a new loan because he was involved in collections. He did not know why the loan was issued when the church's credit score showed a significant level of risk. However, he explained that churches generally are higher risk, and that it is common for community banks to lend money to churches. He acknowledged but could not explain why Comerica failed to follow many of its own standards, in that the property was not appraised, and the articles of incorporation and by-laws were not obtained.

The jury deliberated for approximately one hour before returning their unanimous verdict that (1) Morris did not have actual authority to enter into a mortgage with defendant Comerica, but that (2) she had apparent authority to do so.

⁴ When Reverend Smith became pastor, the church had a net loss of \$563.45 for the year 2004.

II. Analysis

1. Quiet Title Claim

Plaintiffs first argue that the trial court erroneously denied their motion for summary disposition on their claim to quiet title. Plaintiffs moved for summary disposition under MCR 2.116(C)(10). In deciding a motion under this subrule, the trial court considers any pleadings, affidavits, depositions, admissions, or other documentary evidence presented by the parties in a light most favorable to the nonmoving party to determine whether a genuine issue of fact exists. MCR 2.116(G)(2); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

In an action to quiet title, the plaintiff has the burden of proof and must make out a prima facie case of title. If the plaintiff makes out a prima facie case, the defendant then has the burden of proving superior right or title in itself. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999).

Under Michigan law, a local church has the right to adopt by-laws to limit how far it is subject to a higher church. MCL 450.181. Although plaintiffs alleged that Grace Chapel was part of the higher AME Church and that Morris lacked authority to enter into a mortgage, defendant Comerica Bank presented evidence that Grace Chapel and its board members had previously agreed to mortgage the church property. Morris previously obtained a mortgage loan with National City Bank with apparent board authorization. Additionally, documents filed with the state of Michigan identified Morris as the agent, president, and sole director of Grace Chapel. Before obtaining the mortgage loan with Comerica Bank, Morris also signed a statement indicating that her Comerica loan application did not conflict with any applicable by-laws. Viewed in a light most favorable to Comerica Bank, the evidence created a question of fact whether Morris had authority to mortgage the church property. Therefore, the trial court properly denied plaintiffs' motion for summary disposition.

2. Directed Verdict Properly Granted

Plaintiffs next argue that the trial court erred in granting Comerica Bank's motion for a directed verdict on plaintiffs' claims for fraud and conspiracy to commit fraud. We disagree.

In reviewing a trial court's ruling on a motion for a directed verdict, this Court must examine the evidence presented in a light most favorable to the nonmoving party, granting the nonmoving party every reasonable inference, to determine whether reasonable minds could differ. *Garabedian v William Beaumont Hosp*, 208 Mich App 473, 475; 528 NW2d 809 (1995).

Fraud requires: (1) That defendant made a material representation; (2) that it was false; (3) that when [the defendant] made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that should be acted upon by the plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. . . . "[T]he absence of any one of [these elements] is fatal to a recovery." *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976), quoting *Candler v Heigho*, 208 Mich 115, 121; 175 NW 141 (1919).

We agree with the trial court that there was no evidence of any misrepresentation. On appeal, plaintiffs argue that there was evidence that Comerica Bank failed to follow reasonable commercial practices in processing the mortgage loan, failed to require copies of Grace Chapel's by-laws or articles of incorporation, and ignored other red flags, but plaintiffs do not identify any evidence of a misrepresentation that would support an action for fraud. The trial court did not err in granting Comerica Bank's motion for a directed verdict on plaintiffs' claims for fraud.

Plaintiffs also argue that the trial court erred in denying their trial motion for a directed verdict on their claim to quiet title. We disagree.

The actions of an agent can bind a principal when the agent acts with either actual or apparent authority. *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). Apparent authority may arise when acts and appearances lead a third party reasonably to believe that an agency relationship exists. *Id.* "Apparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent." *Id.* As in *Meretta*, "[t]he question here is whether an ordinarily prudent person, conversant with mortgage lending, would be justified" in assuming that Morris had the authority to enter into the mortgage with Comerica. *Id.*

Evidence showed that Grace Chapel did not comply with AME Church rules regarding board meetings, finances, or officers. Morris openly, with Grace Chapel board's knowledge and tacit approval, disregarded the Discipline of the higher church body. Information filed with the state of Michigan in July 2002 listed Morris as Grace Chapel's resident agent, president, and sole director. In 2000, before applying for the 2002 Comerica Bank mortgage, Morris had entered into a loan on behalf of Grace Chapel with National City Bank, with purported authorization from Grace Chapel's board of trustees. Comerica Bank was aware of the previous mortgage. Before the Comerica Bank loan was approved, Morris signed an authorization stating that there was no conflict with Grace Chapel's by-laws or charter. During discovery, Comerica Bank requested copies of Grace Chapel's by-laws and minutes of its trustee board meetings and conferences, but these documents were not produced. The jury was instructed that if it believed that Grace Chapel's by-laws and minutes were under plaintiffs' control and could have been produced, the jury could infer that the evidence would have been adverse to them.

Viewing the evidence and reasonable inferences arising therefrom in a light most favorable to Comerica bank, reasonable minds could differ on the question whether an ordinarily prudent mortgage officer was justified in presuming that Morris had real or apparent authority to mortgage Grace Chapel's church property. Therefore, the trial court did not err in denying plaintiffs' motion for a directed verdict.

3. Verdict Not Against The Great Weight Of Evidence

Plaintiffs also argue that the jury's verdict that Morris had apparent authority to bind Grace Chapel is against the great weight of the evidence. To preserve a claim that a verdict is against the great weight of evidence, a party must raise the issue in a motion for a new trial before the trial court. *Rickwalt v Richfield Lakes Corporation*, 246 Mich App 450, 464; 633 NW2d 418 (2001). There is no indication in the lower court record that plaintiffs raised this issue before the trial court, nor do plaintiffs make any such claim on appeal. Accordingly, this issue is waived. *Id.* Even if we were to consider this issue, the trial court would not have abused its discretion in denying a motion for a new trial on this basis because the jury's verdict was not

against the overwhelming weight of the evidence. *Snell v UACC Midwest, Inc*, 194 Mich App 511, 516; 487 NW2d 772 (1992).

4. Jury Instructions Were Not Erroneous

Finally, plaintiffs argue that the trial court erroneously denied their requests for special jury instructions regarding actions to quiet title and how to determine the authority of an agent. The record reflects that many of the discussions about jury instructions took place off the record. Plaintiffs did not make a record of the instructional issues that they now raise on appeal. Accordingly, this issue is not preserved.

Claims of instructional error are generally reviewed de novo, *Ward v Consolidated Rail Corp*, 472 Mich 77, 83; 693 NW2d 366 (2005), and the “determination whether a jury instruction is applicable and accurately states the law is within the discretion of the trial court.” *Bordeaux v Celotex Corp*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993) (citations omitted). Unpreserved issues are reviewed for plain error that affects substantial rights. *Egbert R Smith Trust v Homer*, 274 Mich App 283, 285-286; ___ NW2d ___ (2007), lv pending; *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

Although plaintiffs assert that the jury should have been instructed that an ecclesiastical corporation has the right to restrict property transactions, the record discloses that the trial court instructed the jury that “the law provides that a church may prescribe the manner and conditions under which the real property may be mortgaged.”

Plaintiffs also argue that the jury should have been instructed, “that once it had established a prima facie case of superior title and that it had no knowledge of defendant Morris’ acts, Michigan law requires Defendant Comerica Bank to overcome the prima facie case.” Plaintiffs presented evidence that Grace Chapel was purportedly subject to the Discipline of the higher church, but Comerica Bank presented evidence that Grace Chapel did not submit to the Discipline while Morris was pastor, that Morris asserted that she had authority to procure the loan, and that Comerica Bank tendered the proceeds of their recorded mortgage to Grace Chapel. The jury verdict form indicates that the jury found that Morris had the apparent authority to procure the mortgage loan. Because it is apparent from the jury’s verdict that the jury determined that Comerica Bank was justified in relying on Morris’s apparent authority to procure the mortgage loan, failure to give this requested instruction did not affect plaintiffs’ substantial rights.

Finally, relying on *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 430; 683 NW2d 171 (2004), plaintiffs argue that the jury was not properly instructed on apparent authority. Plaintiffs rely on *Echelon Homes* for the proposition that Comerica Bank had a duty to investigate whether Morris had authority to enter into the mortgage. In this regard, however, this Court’s decision in *Echelon Homes* was reversed by our Supreme Court. *Echelon Homes*,

LLC v Carter Lumber Co, 472 Mich 192; 694 NW2d 544 (2005). Therefore, the failure to give an instruction based on this Court’s decision in *Echelon Homes* was not plain error.⁵

Affirmed.

/s/ Helene N. White

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood

⁵ Plaintiffs also assert that the jury verdict form was “inadequate,” but do not further address or develop this argument. Any argument in this regard has been waived because of inadequate briefing. *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 253; 673 NW2d 805 (2003).